IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 26TH DAY OF MAY 2026 / 5TH JYAISHTA, 1948

CRL.A NO. 212 OF 2013

AGAINST THE JUDGMENT DATED 30.11.2012 IN ST NO.1862 OF 2010 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,PERAMBRA

APPELLANT/COMPLAINANT:

RAJESH K.
S/O.RARICHAN, KANNAN VEETTIL, CHEVAYUR, MALAPARAMBA, KOZHIKODE, PIN-673009.
BY ADV.SRI.E.NARAYANAN

RESPONDENTS/ACCUSED AND STATE:

1 ASOKAN P.K.
KIZHAKKETHADATHIL, P.O., NANMINDA, KOZHIKODE-673613.

2 STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.
R2 BY SR.PUBLIC PROSECUTOR SRI.ALEX M THOMBRA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.05.2026, THE COURT ON 26.05.2026 DELIVERED THE FOLLOWING:

**CR**

**JUDGMENT**

Dated this the 26th day of May, 2026

Judgment in S.T.No.1862/2010 on the files of the Judicial First Class Magistrate Court-II, Perambra, dated 30.11.2012 is under challenge in this appeal filed at the instance of the complainant in the above case. The 1st respondent herein is the accused and the 2nd respondent is the State of Kerala.

2. Heard the learned counsel for the appellant/complainant and the learned Public Prosecutor. Though notice served upon the 1st respondent/accused, he did not turn up.

3. On dishonour of a cheque for ₹95,000/- (Rupees ninety-five thousand only), the complainant lodged complaint before the Judicial First Class Magistrate Court-II, Perambra alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act' hereinafter), by the accused.

4. The trial court secured presence of the accused for trial. During trial, PW1 was examined and Exts.P1 to P4 were marked on the side of the complainant. DW1 was examined on the side of the accused.

5. On hearing both sides and on appreciating evidence, the trial court acquitted the accused.

6. While assailing the veracity of the judgment rendered by the learned Magistrate, the learned counsel for the appellant/complainant argued that the learned Magistrate went wrong in acquitting the accused where the ingredients for the offence are proved by the complainant. It is also pointed out that the trial court went wrong in finding that there was no legal notice as mandated under proviso (b) to Section 138 of the NI Act, merely on the ground that the amount was not mentioned in the notice. According to the learned counsel for the appellant/complainant, when reading the evidence of PW1 well supported by the evidence of DW1, in between the complainant and the accused, there is only one transaction and therefore, non-mentioning of the cheque amount demanded in the notice is of no

repercussion as the amount is known to the complainant. Therefore, the judgment of acquittal would deserve interference by imposing punishment on the accused.

7. Now, the points arise for consideration are:

*(i) What are the essentials to be stated in a notice contemplated under proviso (b) to Section 138 of the NI Act?*

*(ii) Mere mentioning of the dishonoured cheque number and date would suffice the requirements of notice under proviso (b) to Section 138 of the NI Act?*

*(iii) Whether the trial court was right in holding that the accused was found not guilty of the offence punishable under Section 138 of the NI Act?*

*(iv) Whether the verdict would require interference?*

*(v) The order to be passed?*

8. Point Nos.(i) to (v)

Insofar as the verdict impugned is concerned, the

specific finding of the learned Magistrate is that in a notice demanding payment of amount covered by the dishonoured cheque in terms of proviso (b) to Section 138 of the NI Act, the amount should be specifically stated so as to facilitate payment of the same to avoid penal consequences.

9. It is relevant to note that as per proviso (b) to Section 138 of the NI Act, it has been provided as under:

> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*

10. Similarly, proviso (c) to Section 138 of the NI Act provides as under:

> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.*

11. It is well settled that the offence under Section 138 of the NI Act is a deemed offence, and the offence would be complete only when completion of five stages, viz., (1) issuance of cheque for a legally enforceable debt or liability (2) presentation of cheque within its time limit, i.e., presentation within three months (3) dishonour of the cheque (4) issuance of demand notice contemplated under proviso (b) to Section 138 within thirty days from the date of receipt of information regarding dishonour of the cheque, and (5) failure of the drawer to make payment of the amount demanded within the stipulated time (15 days). Then complaint to be filed within 30 days after the 15 days notice period expires. In proviso (b) to Section 138 of the NI Act, it has been specifically stated that "*makes a demand for the payment of the said amount of money*". This phraseology would indicate that the notice should specifically state the amount to be paid consequential to the dishonour of the cheque. Only when the notice is specific about the amount, it is possible for the recipient of the notice to pay the amount which was specifically asked for to avoid penal consequences. The argument advanced by the learned counsel for

the appellant/complainant that when there is only transaction between the complainant and the accused, the amount demanded to be inferred from the notice, when the dishonour of the cheque was informed without specifying the amount of demand. This argument cannot be countenanced even on a meticulous reading of proviso (b) and (c) of Section 138 of the NI Act. That is to say, when the statute specifically mandates demand of the 'said amount of money', the amount demand must be specifically stated in the notice. Once the notice failed to mention the actual/specific amount due, the possibility to repay the actual/specific amount which failed to be asked for would become impossible. Be it so, it could only be held that in the absence of specific mentioning of the amount in the demand notice there is no demand for payment of the actual/specific amount covered by the cheque in the eye of law. Thus, the law emerges is that when there is demand for the actual amount covered by the cheque and consequential failure to pay the said amount within 15 days, then only an offence under Section 138 of the NI Act said to be committed by the drawer of the cheque and in the absence of demand for the actual/specific

amount demanded in the notice, no offence would be completed, particularly, the 'deemed offence'. If so, without much *ado*, it has to be held that when the complainant fails to mention the amount in the demand notice contemplated under proviso (b) to Section 138 of the NI Act, the notice is incomplete and therefore, the recipient of the notice could not pay the amount to avoid the penal consequences. In such circumstances, there is no legal notice in the eye of law.

12. For the above reasons, the finding of the learned Magistrate is only to be justified in the facts of the case. Therefore, the verdict impugned does not require any interference and the same is confirmed.

In the result, this appeal fails and is accordingly dismissed.

Sd/-
**A. BADHARUDEEN**
**JUDGE**

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